

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

BEYOND79, LLC,

Plaintiff,

v.

EXPRESS GOLD CASH, INC., JUST SELL GOLD, INC.,
LONDES DIGITAL MARKETING, LLC, and OSIDIUS
DEVELOPMENT, LLC,

Defendants.

COMPLAINT

Civil Action No.

Beyond79, LLC, by and through its counsel, Bond, Schoeneck & King, PLLC, as and for its Complaint against Express Gold Cash, Inc., Just Sell Gold, Inc., Londes Digital Marketing, LLC and Osidius Development, LLC, alleges as follows:

Parties

1. Beyond79, LLC (“Beyond79”) is a Delaware limited liability company with its principal place of business at 6421 Congress Avenue, Suite 110, Boca Raton, Florida 33487.

2. Express Gold Cash, Inc. (“EGC”) is a New York corporation with its principal place of business at 100 Main Street, Suite 14, Salamanca, New York 14779.

3. Just Sell Gold, Inc. d/b/a JustSellGold.com (“JSG”) is a Nevada corporation with its principal place of business at 5722 Demitrios Way, Avon, New York 14414.

4. Londes Digital Marketing, LLC (“Londes”) is a New York limited liability company with its principal place of business at 4 West Ave, Spencerport, New York 14559.

5. Osidius Development, LLC (“Osidius”) is a New York limited liability company with a mailing address at P.O. Box 208, Brockport, New York 14420.

Subject Matter Jurisdiction and Venue

6. The Court has subject matter jurisdiction over this action pursuant to the Lanham Act, 15 U.S.C. § 1125(a), and 28 U.S.C. § 1331.

7. This Court has supplemental jurisdiction over the related state law claims pursuant to 28 U.S.C. § 1367(a).

8. This Court further has jurisdiction over all claims based on diversity of the citizenship of the parties pursuant to 28 U.S.C. § 1332.

9. Venue is proper in the Western District of New York pursuant to 28 U.S.C. § 1391(b)(1) because all Defendants are located in the Western District of New York.

Personal Jurisdiction

10. The Court has personal jurisdiction over the Defendants because they are all incorporated in New York and/or have their principal places of business in New York.

Factual Allegations

11. Beyond79, through its brands, including SellYourGold.com empowers consumers across the nation to safely sell precious metals, jewelry, and diamonds online and prides itself on having established a well-founded reputation for quality and customer satisfaction.

12. Beyond79 generates business and promotes its brands, including in relevant part, SellYourGold.com, with (a) social media marketing; (b) search engine optimization advertising, and (c) paid advertising through the major online search engines, Google and Bing, in response to queries from potential customers looking to

sell precious metals or jewelry. Beyond79 also relies on word-of-mouth, including reviews and recommendations on the internet, to generate business.

13. Beyond79 has invested enormous time, effort, and resources in its paid advertising campaigns and promoting its high quality services under and in connection with the SellYourGold.com trade name, and in encouraging satisfied customers to spread the word via online reviews.

14. The domain SellYourGold.com is owned by Beyond79 and was acquired by it July 2014.

15. Beyond79 has done more than \$35 million in business using the website SellYourGold.com.

16. Beyond79 has spent over \$7 million advertising SellYourGold.com.

17. Accordingly, online reviews and recommendations are extremely valuable to Beyond79, and crucial to the continued vitality and growth of Beyond79's business.

18. EGC, JSG and Beyond79 are competitors in the business of buying precious metals and jewelry from the public.

19. Like Beyond79, EGC and JSG promote themselves through various online marketing techniques, including paid advertising with the major online search engines in response to queries from potential customers interested in selling precious metals or jewelry.

20. EGC and Beyond79 are competitors in the online precious metal buying business.

21. Unlike Beyond79, however, EGC and JSG have a practice of setting up purportedly independent websites for the dual purposes of falsely establishing their own

credibility and legitimacy and directing consumers who visit those websites to their own sites.

22. Upon information and belief, EGC, in concert with JSG, is responsible for the creation and operation of at least four purportedly independent websites which claim to provide consumers with information about the precious metal buying industry, all of which fail to disclose their affiliation with EGC and/or JSG and all of which recommend EGC and/or JSG to consumers.

23. The true purpose of these purportedly independent websites is to harm the reputation of Beyond79's most well-known brand, SellYourGold.com, falsely bolster the reputation of EGC and/or JSG, and/or funnel business to EGC and JSG.

TopOnlineGoldBuyers.com

24. TopOnlineGoldBuyers.com held itself out as an independent review site that listed and ranked online precious metal buyers and supposedly provided consumers the opportunity to submit their own reviews of those sites.

25. Rather than post actual consumer reviews, TopOnlineGoldBuyers.com published highly suspect negative reviews about SellYourGold.com.

26. TopOnlineGoldBuyers.com also published false and misleading information about SellYourGold.com that cast it in a negative light and false and misleading information about EGC and JSG that cast them in a positive light.

Top10CashForGold.com

27. Top10CashForGold.com purported to be a review site started by a disgruntled jewelry industry professional who was disappointed by his interaction with online gold buyers.

28. Top10CashForGold.com effusively recommended customers use EGC's services, making false claims and statements about EGC without revealing any connection to EGC.

29. EGC cited both TopOnlineGoldBuyers.com and Top10CashForGold.com as independent review websites that recommended its services.

30. EGC posted and continues to link to a misleading YouTube segment featuring its attorney, Michael Hughes, directing consumers to Top10CashForGold.com as a place where they could obtain an independent assessment of online gold buyers.

SellYourGoldLocations.com & GoldBuyerFinders.com

31. Defendants launched GoldBuyerFinders.com likely to steer consumers looking to sell their gold locally to EGC by touting the benefits of selling gold online and representing that EGC was a verified buyer of gold whereas local sellers were not verified.

32. SellYourGoldLocations.com and GoldBuyerFinders.com again purport to be an independent aggregators of local storefront precious metal buyers, but their content discusses online gold buying extensively, displays EGC banner advertisements, includes reference to EGC in all search results for local stores, and even includes EGC's phone number as a resource to obtain more information on the price of gold in connection with its gold price calculator.

Londes and Osidius

33. Upon information and belief, EGC retained the services of Londes and Osidius to create and host its supposedly independent review and informational

websites, including Top10CashForGold.com, TopOnlineGoldBuyers.com, GoldBuyerFinders.com and SellYourGoldLocations.com.

EGC's Claim to be "Independently Ranked #1"

34. Since at least September 2014, EGC has displayed false and misleading content in its banner ads and on its website regarding the quality and character of its services.

35. Among the information displayed in banner ads and on the homepage of EGC's website since at least 2014 were graphics and text indicating that EGC was "Independently Ranked #1." (Exhibits 1-3.)

36. The EGC website also contained a subpage with the URL <http://www.expressgoldcash.com/independently-ranked-1> which provided further detail about EGC's purported number one ranking by supposed independent reviewers. (Exhibits 4-6.)

37. Portions of the EGC homepage and subpage stated that EGC was "Independently Ranked #1" and included graphics purporting to show results from Top10CashForGold.com, and TopOnlineGoldBuyers.com, each of which listed EGC first among ranked online gold buyers. (Exhibits 1-6.)

38. Text on the EGC subpage further stated that "It's no wonder we've been ranked #1 by multiple independent cash for gold reviewers" and that "Top10CashForGold.com ranked us #1 based on our service record and price we offered for gold. Another review site, TopOnlineGoldBuyers.com, went a step further and mailed ten different companies the same amount of gold. Guess who came out on

top? Express Gold not only offered the most for their gold, but we offered the best guarantees as well.” (Exhibits 4-6.)

39. The EGC subpage then invited consumers to visit the review sites it listed. (Exhibits 4-6.)

Two of the Purported Independent Review Sites are Controlled by EGC

40. Upon information and belief, neither Top10CashForGold.com nor TopOnlineGoldBuyers.com is an independent online gold buyer review site.

41. Upon information and belief, one of the few truly independent site ranking gold buyers is TopConsumerReviews.com, which currently ranks SellYourGold.com as its top online gold buyer. (<https://www.topconsumerreviews.com/cash-for-gold/>).

42. Upon information and belief, both Top10CashForGold.com and TopOnlineGoldBuyers.com are controlled by EGC through companies they hired to perform digital marketing services, including Londes and Osidius.

Top10CashForGold.com is not an Independent Review Site

43. Top10CashForGold.com's home page told the story of Jeffrey Johnson, a frustrated jewelry business professional of 32 years who claims to have gotten “ripped off” by an unnamed online gold buyer, prompting him to create Top10CashForGold.com and recommend EGC as the best online gold buyer. (Exhibits 7-9.)

44. The problem with this narrative is that is completely implausible.

45. Upon information and belief, there is no one named Jeffrey Johnson, who resembles the person pictured on Top10CashForGold.com and who worked in the jewelry industry for 32 years created Top10CashForGold.com.

46. The photograph of Top10CashForGold.com's purported author, Jeffrey Johnson, is a stock photo on Getty Images. (Exhibits 7-10.)

47. Top10CashForGold.com advertised itself as independent on its home page and in a YouTube video stating in the video that "We work for our visitors, not for these gold sites." (<https://www.youtube.com/watch?v=Mx3Djm0VaVo>)

48. Top10CashForGold.com's affiliation with EGC is obvious in the html code used to create the website and increase its search engine optimization.

49. Search engine optimization is the practice of using techniques in website coding to yield higher search results in search engines like Google.

50. While Google's search algorithms and code are proprietary, Google explains on its website that its search rankings are based on usefulness and trustworthiness of the source of information, and that "[i]f other prominent websites on the subject link to the page, that's a good sign the information is high quality." (<https://www.google.com/search/howsearchworks/algorithms/>)

51. Therefore, search engine optimization companies are known to embed hidden links into webpages that link back to the site that they want to optimize.

52. The code for Top10CashForGold.com contained nine hidden links to various EGC webpages but contains no similar links for any other gold buying companies. (Exhibit 11.)

53. Upon information and belief, the search engine optimization company hired to insert those links into Top10CashForGold.com included links to its own home page, "PeakPositions.com" as a means of boosting its own search results. (Exhibit 11.)

54. As of October 22, 2016 the code for Top10CashForGold.com contained a portion identified as “Google Code for ExpressCashGold.com Remarketing List.” (Exhibit 12.)

55. PeakPositions.com created another page called Peak Newsroom, to create links back to EGC and Top10CashForGold.com, interlineating the text with links to both sites. (Exhibit 13.)

56. Michael Hughes, an attorney affiliated with EGC and its owners, appears on a YouTube video, a link to which can be found on EGC's website, calling Top10CashForGold.com an independent review site and twice recommending that customers go to that site to determine which is the best online gold buyer. (<https://www.youtube.com/watch?v=9gLky14dJHU>.)

57. The text “Top10CashForGold.com” even displays at the bottom of the screen during Mr. Hughes' segment.

58. The YouTube video purports to be a news segment on The Balancing Act, a show that airs on the Lifetime television network, however, a review of the website for The Balancing Act reveals that it is run by a company called BrandStar. (<https://thebalancingact.com/about/>.)

59. BrandStar sells product placement services.

60. Upon information and belief, EGC paid The Balancing Act or BrandStar to produce the segment featuring Mr. Hughes.

TopOnlineGoldBuyers.com is not an Independent Review Site

61. TopOnlineGoldBuyers.com is not an actual customer review site either.

62. TopOnlineGoldBuyers.com is registered to Osidius.

63. GoDaddy.com's whois lookup indicates that the registrant's name is Michael LaLonde.

64. Michael LaLonde owns Londes.

65. Osidius and Londes have been identified as partner companies.
<https://www.prweb.com/releases/2012/5/prweb9553401.htm>

66. The Osidius website, www.osidiusdevelopment.com, is copyrighted by "Londes.com."

67. Since at least August of 2014, the home page of TopOnlineGoldBuyers.com invited its visitors to post their own reviews about online gold buyers. (Exhibits 15-18.)

68. TopOnlineGoldBuyers.com was inconsistent with respect to its functionality and the ability of independent reviewers to even submit reviews about EGC and SellYourGold.com. (Compare Exhibits 19-22, 24-25 and 27 with Exhibits 23 and 29.)

69. TopOnlineGoldBuyers.com displayed a "star rating" for each company it listed which it represented were based on "Customer Reviews" years before it ever provided customers with the actual ability to submit reviews.

EGC Misleads Consumers About SellYourGold.com through TopOnlineGoldBuyers.com

70. TopOnlineGoldBuyers.com, misled consumers about SellYourGold.com, by holding its star ratings system out to the public as if it were based on reviews by actual customers.

71. TopOnlineGoldBuyers.com also removed positive customer reviews about SellYourGold.com. (Compare Exhibit 28 with Exhibit 29.)

72. TopOnlineGoldBuyers.com posted unmistakably fake reviews about SellYourGold.com.

73. As of August 29, 2017, TopOnlineGoldBuyers.com included six fake customer reviews about SellYourGold.com, four of which were purportedly made on August 6, 2017 and two of which were purportedly made on August 24, 2017. (Exhibit 27.)

74. In response to the fake online reviews on TopOnlineGoldBuyers.com, Beyond79 sent a cease and desist letter to Londes. (Exhibit 45.)

75. In the letter, Beyond79 remarked on the unlikely coincidence that after years of TopOnlineGoldBuyers.com having a web presence, six dissatisfied SellYourGold.com customers would converge on that site on two days in August 2017 to write negative reviews.

76. Londes was persuaded to remove TopOnlineGoldBuyers.com from the Internet as a result. (Exhibit 30.)

77. The connection between Londes and EGC is apparent based on what happened next.

78. Shortly after sending the cease and desist letter to Londes, which letter alleged violations of the Lanham Act, Beyond79 received a similar letter from counsel to EGC alleging Lanham Act violations by Beyond79. (Exhibit 46.)

79. In addition to ranking EGC as its top online gold buyer, TopOnlineGoldBuyers.com, included a glowing write-up about EGC written from the perspective of someone who actually used EGC's services on numerous occasions.

80. TopOnlineGoldBuyers.com also included a purported customer review praising EGC on August 1, 2014, August 24, 2015, September 3, 2017 and March 26, 2018, but omitted that review on December 6, 2016 and appears to have eliminated review functionality for EGC at that time. (Compare Exhibits 19-22 and 24 with Exhibit 21.)

81. The TopOnlineGoldBuyers.com homepage included a ranking of online gold buyers that contained false and misleading statements about SellYourGold.com and ExpressGoldCash.com.

82. As of January 11, 2011 the TopOnlineGoldBuyers.com home page stated that “In July 2010, we put the top 10 online cash for gold buyers to the test. We sent identical gold packages to each company, consisting of 6.6 dwt (pennyweights) of 14k gold. Then, we rated each company based on: - Payout . . . – BBB Rating . . . [and] – Customer Service.” It then proceeded to list ten websites with their purported insurance coverage, price per DWT paid, BBB rating, guarantee period and years in business as well as the amount that each company purportedly paid for 6.6 DWT of 14k gold. (Exhibit 31.)

83. Later versions of the website, published from 2012 to 2018 contained the same total payout amounts from EGC and other online gold buyers, but different prices per DWT for the gold purchased such that the arithmetic did not tie out. (Exhibit 32 and 14-18.)

84. Those later versions of the website omit the fact that the test of online gold buyers was purportedly conducted in July 2010. (Exhibit 32 and 14-18.)

85. TopOnlineGoldBuyers.com contained other untrue statements about SellYourGold.com, including that it was in operation for only two years. (Exhibit 32 and 14-18.)

86. From 2014 to 2018, TopOnlineGoldBuyers.com falsely said that SellYourGold.com had been in operation for only two years. (Exhibit 32 and 14-18.)

87. SellYourGold.com was registered in 2009 and was live no later than early 2010.

88. TopOnlineGoldBuyers.com falsely said that SellYourGold.com had a rating of “A-.”

89. Beyond79 had an “A” rating with the Better Business Bureau during the relevant time period.

90. From 2014 to 2018, TopOnlineGoldBuyers.com falsely said that SellYourGold.com insured shipments only up to \$1,000. (Exhibits 31, 32 and 14-18.)

91. SellYourGold.com insures shipments at a rate of up to \$25,000.

92. TopOnlineGoldBuyers.com attributed a check issued from GoldKit.com to SellYourGold.com, evidencing the fact that SellYourGold.com was never actually reviewed. (Exhibits 23 and 27.)

93. Upon information and belief, EGC, either itself or through an agent, acting as TopOnlineGoldBuyers.com, purchased Google AdWords advertising meant to be displayed when consumers searched for terms similar to “sell your gold” on Google which read “SellYourGold Reviews & Scams – Consumer Reviews: 1.2/5 Stars” and used a URL of “www.toonlinegoldbuyers.com/SellYourGold/Scams.” (Exhibits 33 and 34.)

94. The intent and effect of the Google AdWords campaign was to suggest to potential SellYourGold.com customers that SellYourGold.com was a scam.

95. This campaign also allowed an ostensibly independent party, TopOnlineGoldBuyers.com, to monopolize key Google AdWords by deliberately misleading consumers and diverting potential customers away from SellYourGold.com.

EGC Makes Untrue and Misleading Statements About Itself on Top10CashForGold.com

96. Top10CashForGold.com contained false and misleading statements about EGC.

97. Top10CashForGold.com said that EGC's "price is also always the best on the net" (Exhibits 7-9.)

98. Top10CashForGold.com listed EGC as its top online gold buyer.

99. Top10CashForGold.com listed JSG, another online gold buyer affiliated with the owners of EGC, as its second ranked online gold buyer.

100. EGC has represented that SellYourGold.com is the market leader in online gold buying.

101. Top10CashForGold.com failed to even list SellYourGold.com as one of the top ten cash for gold sites on the Internet.

EGC Launches New Website Aimed at Diverting Traffic from SellYourGold.com

102. EGC, through Londes, launched another website, GoldBuyerFinders.com in or around 2011.

103. The registered owner of GoldBuyerFinders.com is Michael LaLonde of Londes.

104. GoldBuyerFinders.com purports to be a website that helps consumers find local store front gold buyers.

105. However, the homepage of GoldBuyerFinders.com contains an advertising for EGC, and the Calculate Payout page of GoldBuyerFinders.com contains EGC's phone number below the calculator. (Exhibits 35 and 36.)

106. GoldBuyerFinders.com How to Sell Gold page contains additional advertisings for EGC and related company JSG, and links to the archived versions TopOnlineGoldBuyers.com, ReviewGoldBuyers.com and Top7CashForGold.com which links direct visitors to archive.org version of those websites. (Exhibit 37.)

107. SellYourGoldLocations.com was launched on or before May 31, 2013.

108. As of May 31, 2013, the content and appearance of SellYourGoldLocations.com was identical to the content of GoldBuyerFinders.com, including the text "GoldBuyerFinder.com" at the top. (Exhibit 38.)

109. The next iteration of SellYourGoldLocations.com archived on archive.org, on April 27, 2014, is identical except that the name at the top of the page was changed to "SellYourGOLDLocations.com." (Exhibit 39.)

110. SellYourGoldLocations.com is registered to Osidius.

111. The registrant of SellYourGoldLocations.com is Michael LaLonde.

112. Just like Top10CashForGold.com, TopOnlineGoldBuyers.com, GoldBuyerFinders.com and SellYourGoldLocations.com are yet other pass through sites meant to funnel customers to EGC's home page. (Exhibit 40.)

113. While SellYourGoldLocations.com and GoldBuyerFinders.com purport to simply list local store front gold buyers, each search result for a local store also comes with a listing for EGC at the top. (Exhibit 41.)

114. The results for local companies are primarily designated as “unverified” whereas EGC’s paid result is identified as “verified” on SellYourGoldLocations.com and GoldBuyerFinders.com. (Exhibit 41.)

115. SellYourGoldLocations.com and GoldBuyerFinders.com appear to sell verification for \$24/month. (Ex 42.)

116. All search results also include text recommending that customers sell online, and lists EGC as the only online gold buyer. (Exhibit 41.)

117. Each page also contains a box called “Online Buyer Reviews,” but the only online buyer reviewed is EGC. (Exhibit 41.)

118. SellYourGoldLocations.com and GoldBuyerFinders.com “highly recommend[] you talk to Express Gold before selling your gold jewelry elsewhere.” (Exhibit 43.)

119. They make a case for “Why Online Companies Can Pay More” than the storefront locations for which the site purports to provide directory services. (Exhibit 43.)

120. SellYourGoldLocations.com and GoldBuyerFinders.com assert that “Express Gold has been ranked as a top online gold buyer in several independently executed tests.” (Exhibit 43.)

121. Like GoldBuyerFinders.com, there is a gold price calculator on SellYourGoldLocations.com that includes at the bottom EGC's phone number for more information. (Exhibit 44.)

122. The phone number listed on the calculator is (877) 465-3165. (Exhibit 44.)

123. The phone number for EGC listed on its website is (877) 465-3165.

124. The apparent purpose of SellYourGoldLocations.com and GoldBuyerFinders.com is to mislead customers interested in selling their gold into believing that EGC was independently chosen by them as the best place to sell gold.

FIRST CLAIM FOR RELIEF
False Advertising Under
15 U.S.C. § 1125(a)

125. Beyond79 repeats and realleges each and every allegation in Paragraphs 1 through 124 as if stated fully herein.

126. Defendants, in connection with services rendered in interstate commerce, have made and continue to make false statements of fact and false representations of fact as to the nature, characteristics and quality of Beyond79's services.

127. Specifically, Defendants made material misstatements about SellYourGold.com's years of operation, Better Business Bureau rating and insurance coverage, all of which are attributes customers rely on when selecting an online precious metals buyer.

128. According to TopConsumerReviews.com, which is understood to be an independent review site for multiple industries, the most important factors when selecting a cash for gold company are, insurance, BBB rating and Guarantee.

(https://www.topconsumerreviews.com/cash-for-gold/detailed-reviews.php#sell_your_gold.)

129. Defendants further published fake online reviews making negative statements about SellYourGold.com's services even though SellYourGold.com had not actually been reviewed and used a star rating system that misled consumers into believing it was based on actual customer reviews.

130. Defendants additionally caused search results for terms similar to "Sell Your Gold" on Google to return results associating SellYourGold.com with the word "scam" so as to mislead consumers into believing that Beyond79's services were a scam.

131. Defendants' actions have caused customers to divert their business away from Beyond79's SellYourGold.com and toward its competitors, including EGC and JSG.

132. Defendants' actions have also reduced the good will associated with SellYourGold.com.

133. Defendants' false and misleading statements of fact and misrepresentations of fact concerning Beyond79's services were made, and continue to be made, in commercial advertising in a manner material to the public's decision to use EGC's and JSG's services, or the services of Beyond79's competitors instead of those of Beyond79.

134. Defendant's false and misleading statements are commercial advertisements that Defendants have placed into interstate commerce.

135. The above described acts of Defendants have deceived, or have the tendency to deceive, a substantial segment of consumers who see such representations.

136. The above described acts are material in that they are likely to influence a consumer's purchasing decision.

137. EGC, JSG and Beyond79 are direct competitors in the online precious metals purchasing industry.

138. As a result of Defendants' false and misleading advertisings, Beyond79 has suffered a direct diversion of customers to EGC and/or JSG and other of its competitors and has been deprived of substantial revenue in an amount to be determined at trial but believed to be no less than \$6 million.

139. Defendants have caused and will continue to cause immediate and irreparable injury to Beyond79, including injury to its business, reputation and good will, for which there is no adequate remedy at law, and as such Beyond79 is entitled to injunctive relief under 15 U.S.C. § 1116 restraining Defendants, their agents, employees, representatives and all persons acting in concert with them from engaging in further acts in violation of § 43(a) of the Lanham Act and ordering removal of all of Defendants' false advertising.

140. Beyond79 is entitled under 15 U.S.C. § 1117 to actual damages to be determined at trial, to have such damages trebled, to disgorgement of EGC's and JSG's profits and the costs of this action.

141. Defendants have acted in bad faith and have knowingly, willfully and deliberately engaged in false advertising with the intent to deceive the public and injure

competitors, including Beyond79. Thus, in addition to the relief requested herein, Beyond79 is entitled to reasonable attorneys' fees pursuant to 15 U.S.C. § 1117(a).

SECOND CLAIM FOR RELIEF
False Advertising Under
N.Y. Bus. Law § 349

142. Beyond79 repeats and realleges each and every allegation in Paragraphs 1 through 141 as if stated fully herein.

143. Defendants have engaged in a consumer-oriented pattern and practice of making false statements about Beyond79.

144. Defendants' false statements about Beyond79 were placed on consumer focused websites.

145. Those false statements were materially misleading with respect to the quality and characteristic of Beyond79's services.

146. Specifically, Defendants made material misstatements about SellYourGold.com's years of operation, Better Business Bureau rating and insurance coverage, all of which are attributes customers rely on when selecting an online precious metals buyer.

147. Defendants further published fake consumer reviews making negative statements about SellYourGold.com's services even though SellYourGold.com had not actually been reviewed and used a star rating system that misled consumers into believing it was based on actual customer reviews.

148. Defendants additionally caused search results for terms similar to "Sell Your Gold" on Google to return results associating SellYourGold.com with the word

“scam” so as to mislead consumers into believing that Beyond79’s services were a scam.

149. Defendants’ actions have caused customers to divert their business away from Beyond79’s SellYourGold.com and toward its competitors, including EGC and JSG.

150. Defendants’ actions have also reduced the good will associated with SellYourGold.com.

151. Defendants’ conduct was willful because it knew the false and misleading representations about SellYourGold.com were materially false.

152. Beyond79 has been damaged at an amount to be determined at trial that is not less than \$6 million.

153. Beyond79 is entitled to the greater of its actual damages or \$50 for each instance of dissemination of the false information by Defendants.

THIRD CLAIM FOR RELIEF
False Advertising Under
N.Y. Gen. Bus. Law § 350

154. Beyond79 repeats and realleges each and every allegation in Paragraphs 1 through 153 as if stated fully herein.

155. Defendants have engaged in a consumer-oriented pattern and practice of making false statements about Beyond79.

156. Defendants’ false statements about Beyond79 were placed on consumer focused websites.

157. Those false statements were materially misleading with respect to the quality and characteristic of Beyond79’s services.

158. Specifically, Defendants made material misstatements about SellYourGold.com's years of operation, Better Business Bureau rating and insurance coverage, all of which are attributes customers rely on when selecting an online precious metals buyer.

159. Defendants further published fake consumer reviews making negative statements about SellYourGold.com's services even though SellYourGold.com had not actually been reviewed and used a star rating system that misled consumers into believing it was based on actual customer reviews.

160. Defendants additionally caused search results for terms similar to "Sell Your Gold" on Google to return results associating SellYourGold.com with the word "scam" so as to mislead consumers into believing that Beyond79's services were a scam.

161. Defendants' actions have caused customers to divert their business away from Beyond79's SellYourGold.com and toward its competitors, including EGC and JSG.

162. Defendants' actions have also reduced the good will associated with SellYourGold.com.

163. Defendants' conduct was willful because it knew the false and misleading representations about SellYourGold.com were materially false.

164. Beyond79 has been damaged in an amount to be determined at trial not less than \$6 million.

FOURTH CLAIM FOR RELIEF
Unfair Competition

165. Beyond79 repeats and realleges each and every allegation in Paragraphs 1 through 164 as if stated fully herein.

166. Defendants have engaged in a consumer-oriented pattern and practice aimed at the public of making false statements about Beyond79.

167. Defendants' false statements about Beyond79 were placed on consumer focused websites.

168. Those false statements were materially misleading with respect to the quality and characteristic of Beyond79's services.

169. Specifically, Defendants made material misstatements about SellYourGold.com's years of operation, Better Business Bureau rating and insurance coverage, all of which are attributes customers rely on when selecting an online precious metals buyer.

170. Defendants further published fake consumer reviews making negative statements about SellYourGold.com's services even though SellYourGold.com had not actually been reviewed and used a star rating system that misled consumers into believing it was based on actual customer reviews.

171. Defendants additionally caused search results for terms similar to "Sell Your Gold" on Google to return results associating SellYourGold.com with the word "scam" so as to mislead consumers into believing that Beyond79's services were a scam.

172. Defendants' actions have caused customers to divert their business away from Beyond79's SellYourGold.com and toward its competitors, including EGC and JSG.

173. Defendants' actions have also reduced the good will associated with SellYourGold.com.

174. Defendants' conduct was undertaken in bad faith in an effort to harm consumers and Beyond79.

175. Beyond79 has been damaged in an amount to be determined at trial not less than \$6 million.

FIFTH CLAIM FOR RELIEF
Unjust Enrichment

176. Beyond79 repeats and realleges each and every allegation in Paragraphs 1 through 175 as if stated fully herein.

177. EGC made false statements about Beyond79 on consumer focused websites or cause such false statements to be made.

178. Specifically, EGC made or caused to be made material misstatements about SellYourGold.com's years of operation, Better Business Bureau rating and insurance coverage, all of which are attributes customers rely on when selecting an online precious metals buyer.

179. EGC further published or caused to be published fake online reviews making negative statements about SellYourGold.com's services even though SellYourGold.com had not actually been reviewed and used a star rating system that misled consumers into believing it was based on actual customer reviews.

180. EGC additionally caused search results for “Sell Your Gold” on Google to return results associating SellYourGold.com with the word “scam” so as to mislead consumers into believing that Beyond79’s services were a scam.

181. EGC’s actions have caused customers to divert their business away from Beyond79’s SellYourGold.com and toward its competitors, including EGC.

182. EGC has been unjustly enriched as a result of the false statements it made and caused to be made.

183. Beyond79 has been damaged in an amount to be determined at trial not less than \$6 million.

SIXTH CLAIM FOR RELIEF
False Advertising Under
15 U.S.C. § 1125(a)

184. Beyond79 repeats and realleges each and every allegation in Paragraphs 1 through 183 as if stated fully herein.

185. Defendants, in connection with services rendered in interstate commerce, have made and continue to make false statements of fact and false representations of fact as to the nature, characteristics and quality of EGC’s services.

186. Specifically, EGC made material misstatements about the independence of various consumer review sites including Top10CashForGold.com and TopOnlineGoldBuyers.com, both of which promoted EGC as the best online precious metal buyer on its own website and in a YouTube video.

187. Defendants further published fake online review sites including Top10CashForGold.com, TopOnlineGoldBuyers.com, GoldBuyerFinders.com and

SellYourGoldLocations.com which promoted and continue to promote EGC and JSG while claiming independence and failing to disclose their relationship to EGC and JSG.

188. Defendants' actions have caused customers to divert their business away from Beyond79's SellYourGold.com toward EGC and JSG.

189. Defendants' actions have also falsely increased the goodwill of EGC to the detriment of Beyond79.

190. Defendants' false and misleading statements of fact and misrepresentations of fact concerning EGC's services were made, and continue to be made, in commercial advertising in a manner material to the public's decision to use EGC's services, or the services of Beyond79.

191. Defendant's false and misleading statements are commercial advertisements that Defendants have placed into interstate commerce.

192. The above described acts of Defendants have deceived, or have the tendency to deceive, a substantial segment of consumers who see such representations.

193. The above described acts are material in that they are likely to influence a consumer's decision to engage an online precious metals buyer.

194. EGC, JSG and Beyond79 are direct competitors in the online precious metals purchasing industry.

195. As a result of Defendants' false and misleading advertisings, Beyond79 has suffered a direct diversion of customers to EGC, JSG and has been and will continue to be deprived of substantial revenue in an amount to be determined at trial but believed to be no less than \$6 million.

196. Defendants have caused and will continue to cause immediate and irreparable injury to Beyond79, including injury to its business, reputation and good will, for which there is no adequate remedy at law, and as such Beyond79 is entitled to injunctive relief under 15 U.S.C. § 1116 restraining Defendants, their agents, employees, representatives and all persons acting in concert with them from engaging in further acts in violation of § 43(a) of the Lanham Act and ordering removal of all of Defendants' false advertising.

197. Beyond79 is entitled under 15 U.S.C. § 1117 to actual damages to be determined at trial, to have such damages trebled, to disgorgement of EGC's and JSG's profits and the costs of this action.

198. Defendants have acted in bad faith and have knowingly, willfully and deliberately engaged in false advertising with the intent to deceive the public and injure competitors, including Beyond79. Thus, in addition to the relief requested herein, Beyond79 is entitled to reasonable attorneys' fees pursuant to 15 U.S.C. § 1117(a).

SEVENTH CLAIM FOR RELIEF
False Advertising Under
N.Y. Bus. Law § 349

199. Beyond79 repeats and realleges each and every allegation in Paragraphs 1 through 198 as if stated fully herein.

200. Defendants have engaged in a consumer-oriented pattern and practice of making false statements about EGC.

201. Defendants' false statements about EGC were placed on consumer focused websites.

202. Those false statements were materially misleading with respect to the quality and characteristic of EGC services.

203. Specifically, Defendants made material misstatements about the independence of sites that purported to review and actually promoted EGC.

204. Defendants' actions have caused customers to divert their business away from Beyond79's SellYourGold.com and from other competitors toward EGC and JSG.

205. Defendants' actions have also falsely increased the goodwill of EGC and JSG to the detriment of the good will associated with SellYourGold.com.

206. Defendants' conduct was willful because it knew the false and misleading representations about EGC and JSG, particularly claims of independence, were materially false.

207. Beyond79 has been damaged in an amount to be determined at trial not less than \$6 million.

208. Beyond79 is entitled to the greater of its actual damages or \$50 for each instance of dissemination of the false information by Defendants.

EIGHTH CLAIM FOR RELIEF
False Advertising Under
N.Y. Gen. Bus. Law § 350

209. Beyond79 repeats and realleges each and every allegation in Paragraphs 1 through 208 as if stated fully herein.

210. Defendants have engaged in a consumer-oriented pattern and practice of making false statements about EGC and JSG.

211. Defendants' false statements about EGC and JSG were placed on consumer focused websites.

212. Those false statements were materially misleading with respect to the quality and characteristic of EGC's and JSG's services.

213. Specifically, Defendants made material misstatements about the independence of sites that purported to review and actually promoted EGC and JSG.

214. Defendants' actions have caused customers to divert their business away from Beyond79's SellYourGold.com and from other competitors toward EGC and JSG.

215. Defendants' actions have also falsely increased the goodwill of EGC and JSG to the detriment of the good will associated with SellYourGold.com.

216. Defendants' conduct was willful because it knew the false and misleading representations about EGC and JSG, particularly claims of independence, were materially false.

217. Beyond79 has been damaged in an amount to be determined at trial not less than \$6 million.

NINTH CLAIM FOR RELIEF
Unfair Competition

218. Beyond79 repeats and realleges each and every allegation in Paragraphs 1 through 217 as if stated fully herein.

219. Defendants have engaged in a consumer-oriented pattern and practice aimed at the public of making false statements about EGC and JSG and the independence of purported "review" websites.

220. Defendants' false statements about EGC and JSG were placed on consumer focused websites which purport to be independent but which are in fact controlled by EGC and JSG, including Top10CashForGold.com, TopOnlineGoldBuyers.com, GoldBuyerFinders.com and SellYourGoldLocations.com..

221. Those false statements were materially misleading with respect to the quality and characteristic of EGC's and JSG's services.

222. Defendants' actions have caused customers to divert their business away from Beyond79's SellYourGold.com toward EGC and JSG.

223. Defendants' actions have also reduced the good will associated with SellYourGold.com.

224. Defendants' conduct was undertaken in bad faith in an effort to harm consumers and Beyond79.

225. Beyond79 has been damaged in an amount to be determined at trial not less than \$6 million.

TENTH CLAIM FOR RELIEF
Unjust Enrichment

226. Beyond79 repeats and realleges each and every allegation in Paragraphs 1 through 225 as if stated fully herein.

227. EGC and JSG made false statements about themselves on consumer focused websites or cause such false statements to be made.

228. Specifically, EGC and JSG intimated that they had been reviewed as the best gold buyers by independent websites when the review sites identified were not independent.

229. Defendants' actions have caused customers to divert their business away from Beyond79's SellYourGold.com and its competitors and towards EGC and JSG.

230. Defendants have been unjustly enriched as a result of the false statements they made and caused to be made.

231. Beyond79 has been damaged in an amount to be determined at trial not less than \$6 million.

ELEVENTH CLAIM FOR RELIEF
Unfair Trade Practices Under
Florida Deceptive and Unfair Trade Practices Act (FDUPTA §§ 501.201-.213)

232. Beyond79 repeats and realleges each and every allegation in Paragraphs 1 through 231 as if stated fully herein.

233. Beyond79 has its principal place of business in Florida.

234. Defendants operate on the Internet and make or have made the false and misleading content on EGC's website, TopOnlineGoldBuyers.com, Top10CashForGold.com, GoldBuyerFinders.com and SellYourGoldLocations.com available to Florida residents and consumers.

235. Defendants have published misleading banner advertisings which are displayed in Florida.

236. Defendants have acquired misleading and false Google AdWords results which display in Florida.

237. Defendants' unconscionable, deceptive, and unfair acts of claiming that EGC was independently rated the #1 online gold buyer when the proffered ratings sources were not independent, publishing of false "ratings" and "review" websites under false pretense to promote EGC without disclosing the connection between Top10CashForGold.com and TopOnlineGoldBuyers.com and EGC, disseminating fake and false reviews about SellYourGold.com, infringing on the SellYourGold mark by creating SellYourGoldLocations.com for the purpose of directing customers to EGC,

have been wanton, intentional, and reckless and with complete disregard to Beyond79's rights and with the purpose of deceiving the Florida public.

238. Defendants' deceptive and unfair trade practices have caused, and will continue to cause, irreparable injury to Beyond79, and are likely to result in the unjust enrichment of EGC, unless enjoined by the Court.

239. Defendants' deceptive and unfair trade practices have caused, and will continue to cause irreparable injury to Plaintiffs, and are likely to result in unjust enrichment of Defendants, unless enjoined by this Court.

WHEREFORE, Beyond79 respectfully seeks the following relief:

1. judgment in the amount of the greater of \$50 per view or \$6 million for damages arising out of false and misleading statements made by Defendants about SellYourGold.com, plus interest;
2. judgment in the amount of the greater of \$50 per view or \$6 million for damages arising out of false and misleading statements made by Defendants regarding EGC, plus interest;
3. judgment in the amount of the greater of \$50 per view or \$6 million for damages arising out of Defendants' false and misleading publication of TopOnlineGoldBuyers.com, plus interest;
4. judgment in the amount of the greater of \$50 per view or \$6 million for damages arising out of Defendants' false and misleading publication of Top10CashForGold.com, plus interest;

5. judgment in the amount of the greater of \$50 per view or \$6 million for damages arising out of Defendants' false and misleading publication of GoldBuyerFinders.com, plus interest;

6. judgment in the amount of the greater of \$50 per view or \$6 million for damages arising out of Defendants' false and misleading publication of SellYourGoldLocations.com, plus interest;

7. injunctive relief precluding Defendants and all persons acting for or through them, Internet Service Providers and domain name registrars, from:

- a. making future false or misleading claims about SellYourGold.com;
- b. falsely claiming that EGC is independently rated #1;
- c. directing customers to Top10CashForGold.com or TopOnlineGoldBuyers.com as purported independent sources of EGC's #1 rating;

8. injunctive relief compelling Defendants and all persons acting for or through them, as well as Internet Service Providers and domain name registrars, to:

- a. remove any and all references on the Internet to ratings of online precious metal buyers by Top10CashForGold.com or TopOnlineGoldBuyers.com, including but not limited to YouTube videos referencing those websites;
- b. cease the distribution of print materials referencing ratings of online precious metal buyers by Top10CashForGold.com or

TopOnlineGoldBuyers.com and/or their rating on online precious metal buyers;

c. cease the use of deceptive and false Google AdWords campaigns referencing SellYourGold;

d. cease the publication of SellYourGoldLocations.com and GoldBuyerFinders.com;

9. granting Beyond79 its reasonable attorneys' fees; and

10. granting Beyond79 such other and further relief as the Court deems just and proper.

Demand for Jury Trial

Beyond79 demands trial by jury on all issues so triable.

Dated: March 11, 2019

BOND, SCHOENECK & KING, PLLC

By: 

Edward P. Hourihan, Jr.

Curtis A. Johnson

Attorneys for Beyond79, LLC

Office and P.O. Address

350 Linden Oaks, Third Floor

Rochester, New York 14625-2825

Telephone: (585) 362-4700